

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

USA,

Plaintiff,

v.

DARRELL MURPHY and DESHAWN  
LEMONS-WOODARD,

Defendants.

Case No. [19-cr-00043-YGR](#) (DMR)

**ORDER RE FORFEITURE OF BONDS  
OF DEFENDANTS DARRELL  
MURPHY AND DESHAWN LEMON-  
WOODARD**

Re: Dkt. Nos. 162, 171, 177, 181, 182, 183,  
184

Defendants Darrell Murphy and Shawn Lemons-Woodard are charged in a multi-defendant indictment with conspiracy and dealing firearms without a license. [Docket No. 131 (Superceding Indictment)]. On February 25, 2019, following a detention hearing, the court released Murphy on a set of conditions which included a \$50,000 unsecured bond co-signed by his grandmother, Lakysa Fields. [Docket No. 34]. The court held Lemons-Woodard's detention hearing on April 10, 2019 and released him on a \$75,000 bond co-signed by his aunt Deshawna Sterling Patton as well as his mother, Nichelle Lemons. [Docket No. 79]. On October 18, 2019, the government moved to remand Murphy and Lemons-Woodard and to forfeit their bonds due to violations of the conditions of their release. [Docket No. 162]. Both Defendants filed opposition briefs. [Docket Nos. 171, 177]. On October 30 and November 4, 2019, the court held hearings and remanded Murphy and Lemons-Woodard, respectively. The parties submitted supplemental briefing on the issue of bond forfeiture at the court's instruction. [Docket Nos. 181, 182, 183, 184]. Having considered the parties' arguments, the court orders that the \$50,000 bond be forfeit against Murphy and co-signor Lakysa Fields, and that the \$75,000 bond be forfeit against Lemons-

Woodard and co-signor Nichelle Lemons.<sup>1</sup>

## **I. BACKGROUND**

### **A. Darrell Murphy**

Murphy is 21 years old. On February 25, 2019, following a contested detention hearing, the court largely adopted the recommendation of Pretrial Services and released Murphy on a \$50,000 unsecured bond co-signed by his grandmother, Lakysa Fields, who also agreed to house him and serve as his custodian. Release Order [Docket No. 34]. The release order set forth numerous strict conditions. Of particular relevance here, it included the conditions that Murphy not commit any federal, state or local crime, that he not have contact with any of his co-Defendants outside the presence of counsel, and that he maintain verifiable employment, or if unemployed, seek employment or commence an educational program as directed by Pretrial Services. *Id.* Murphy was placed on electronic monitoring and was permitted to leave his grandmother's home only for specified purposes such as court appearances, drug treatment and testing, work, and school. *Id.*

The court interviewed Fields in court and determined that she is a law-abiding person who has a close relationship with her grandson. She expressed her willingness to provide critical moral suasion to deter Murphy from violating the conditions of his release. The court accepted Fields as a co-signor on an unsecured bond, rather than a surety who must demonstrate adequate assets under Federal Rule of Criminal Procedure 46(e) and agree to forfeiture of certain sums pursuant to 18 U.S.C. § 3142(c)(B)(xii). Thus, the court imposed the co-signor condition under section 3142(c)(xiv)'s catch-all provision. *See United States v. Thomas*, 615 F. Supp. 2d 1083, 1085-86 (N.D. Cal. April 29, 2009) (noting that this procedure is employed routinely throughout the federal

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<sup>1</sup> The government's motions for remand and bond forfeiture were filed directly before this court rather than being referred by the district court. The district court referred a similar motion regarding a co-Defendant to a different magistrate judge pursuant to Federal Rule of Criminal Procedure 59(a) which governs referrals of non-dispositive matters. *See* Docket No. 188 ("Order Referring Motion to Magistrate Judge Westmore."). The magistrate judge then issued a report and recommendation. *See* Docket No. 202 ("Order Denying Motion to Remand Defendant Kennedy-Palmer; Report and Recommendation to Deny Motion to Forfeit Bond."). This court will treat the matter as a Rule 59(a) referral. For that reason, this order is not styled as a report and recommendation, because that is the required procedure for Rule 59(b) referrals but not for those made pursuant to Rule 59(a).

1 courts). The court addressed Fields directly to make sure that her agreement to co-sign the bond  
2 and to act as custodian was voluntary, to explain that the government could seek to obtain a  
3 \$50,000 judgment against her if Murphy violated a condition of his release, and to answer any of  
4 her questions about being a co-signor or a custodian. Fields agreed to sign the bond with full  
5 knowledge of the potentially dire financial consequences that could ensue if Murphy violated his  
6 release order.

7 For several months Murphy appeared to be adjusting well to pretrial supervision. On  
8 March 14, 2019, the court signed the parties' stipulation permitting Murphy to leave Field's house  
9 to attend a baby shower for his expected child. [Docket No. 54]. On April 3, 2019, the court  
10 approved another stipulation allowing Murphy to stay overnight at the hospital to be present for  
11 the birth of his child. [Docket No. 73].

12 Unfortunately, on August 9, 2019, Murphy's seemingly compliant behavior came into  
13 question when Pretrial Services provided notice of two bail violations. The first violation  
14 involved Murphy's deceptive behavior regarding employment. Murphy advised Pretrial Services  
15 that he had gotten a job, and that he would be working night shifts. He was granted permission to  
16 leave his grandmother's house from 9:00 p.m. to 7:30 a.m. to attend his first shift. The employer  
17 subsequently notified Pretrial Services that Murphy had clocked into work but then immediately  
18 walked off the job. Murphy's actions had been captured on the employer's video camera. When  
19 confronted with this information by his Pretrial Services officer, Murphy denied that he had  
20 abandoned his job. Instead, he concocted an elaborate story about how he was not able to clock  
21 out that night due to an equipment failure. He claimed that a supervisor named Melissa (later  
22 confirmed to be non-existent) could vouch for him.

23 The second violation involved Murphy's enrollment in a local community college. Several  
24 months into the semester, Murphy's Pretrial Service officer made an unannounced school visit.  
25 Finding the school nearly empty, the officer learned that the school term had ended the week prior,  
26 even though Murphy continued to notify him about his alleged class hours in order to obtain  
27 permission to be away from his grandmother's home during those periods. When the officer  
28 confronted Murphy, he denied that his classes were over and claimed that he had been in a

1 computer lab. The officer went back to check the posted hours for the computer lab and  
2 discovered that it had been closed during the time that Murphy reported that he was there.

3 The officer continued to investigate both violations for several days and Murphy continued  
4 to deny the violating conduct. After confirming both violations through investigation, the officer  
5 drafted a bail violation memorandum and provided a copy to Murphy's attorney. Approximately  
6 one hour later, Murphy acknowledged to his officer via email that he had lied about not leaving  
7 work. In fact, he clocked in, then immediately left his workplace to get food before going to stay  
8 at a friend's house overnight. As to the school-related violation, Murphy continued to contend  
9 that he had visited the computer lab for a few hours, but then explained that he spent the rest of the  
10 day "roaming around."

11 At the request of Pretrial Services, the court held a hearing on August 15, 2019 so that  
12 Murphy could show cause why his bond should not be revoked. At the hearing, Murphy made an  
13 impassioned plea for leniency. He stated "[I want] to take responsibility for my actions. I've been  
14 trying to better myself." Transcript of 8/15/19 hearing at 15 [Docket No. 161]. He claimed that  
15 he understood that he would not be able to take care of his newborn son and his fiancée if he was  
16 in jail. *Id.* Murphy asserted that the situation "made me realize that if I was to continue to mess  
17 up, I would be away from my family for a long time and that is something that I do not want to  
18 happen. I was without a dad for my whole life and I know how much it mean[s] for someone to  
19 have a dad in their life." *Id.* at 15-16. During the hearing, the Pretrial Services officer informed  
20 the court that Murphy still had not provided documentation that he had completed the three classes  
21 that he allegedly had been attending all semester. Instead, Murphy had provided "a blurry  
22 screenshot" of his grades. The court asked: "Mr. Murphy, did you attend all three classes? Did  
23 you get grades in all three classes?" Murphy responded "Yes, I did, Your Honor," before  
24 launching into a detailed explanation of why he had not yet been able to provide verification to the  
25 officer. The court asked Murphy again:

26  
27 THE COURT: Mr. Murphy, I want you to answer this very carefully. And you  
28 might want to talk to your lawyer first, okay? And I'm asking you here in a court  
of law, so this is not the time to double-down on lies. If you did not finish those

1 classes, you know, attend classes sufficiently to get a grade in each of them, you  
2 need to say so now...

3 MURPHY: Yes, Your Honor. Yes. I did attend.

4 THE COURT: Okay. Well – and you got grades in each of them?

5 MURPHY: Yes, I did get grades, but I recently have a hold on my – on my account  
6 to where I can't access any type of information. But before they put the hold on  
7 there and I was recently – before the semester was over, I was able to [take a]  
8 screenshot.

9 Murphy then promised to provide verification that he completed his classes. *Id.* at 22. The court  
10 began considering the possibility of allowing Murphy to remain out of custody, but on strict  
11 “lockdown,” or house arrest at his grandmother’s house.

12 Lakysa Fields attended the hearing. The court asked her to approach the bench and  
13 engaged her in the following discussion:

14 THE COURT: Okay...I know you’ve been here through the whole proceeding, so you’ve  
15 been hearing what he did --

16 MS. FIELDS: Yes.

17 THE COURT: -- and my reaction to it, and one of the things I was really concerned about  
18 is that he kind of threw you under the bus. His behavior, you know, put you and him at  
19 risk, but you in particular. You put your neck out for him --

20 MS. FIELDS: Yes.

21 THE COURT: -- to the tune of \$50,000, plus having him under your roof and agreeing to  
22 be his custodian. Do you wish to continue in this capacity? Do you think -- you know, if I  
23 put him back in your home on lockdown, I -- honestly, you know, people can be -- people  
24 are complicated. People we love are complicated.

25 MS. FIELDS: Yes, they are.

26 THE COURT: Right? So just because you love someone doesn’t mean that they’re a good  
27 risk.

28 MS. FIELDS: You’re right.

THE COURT: So I want to have a chance to talk to you because I need to figure out what  
to do here. And given that he -- he violated your trust and now you’re at risk, what are you  
thinking about all of this?

\* \* \*

1 After making sure that Fields still understood her duties, and after obtaining her assurances  
2 that she would report Murphy if she knew he violated the conditions of his release, Fields  
3 recommitted to remaining on the bond as a co-signor and custodian:

4 MS. FIELDS: I have no problem when I am there when Darrell's there. He do --  
5 does apply [himself], whatever I tell him to do. Now, his actions that he did was the time  
6 when he was supposed to go to school or work. He know[s] I do not play that. I do not play  
7 that at all. I'm very strict. I don't care how old you are. I was raised like that. You still  
8 could get a slap on the hand or whatever the case may be, whatever it is. I believe he can  
9 do it. I know I can do it.

10 THE COURT: Okay.

11 MS. FIELDS: I know I can do it.

12 Transcript at 25-29.

13 On the strength of Fields's representations, the court did not remand Murphy but instead  
14 ordered him placed on lockdown at Fields's house.

15 On October 18, 2019, the government filed a motion to forfeit Murphy's bond and to  
16 remand him to custody. [Docket No. 162]. The government's papers include numerous  
17 uncontested exhibits that establish three significant violations of his conditions of release. To  
18 begin with, the record demonstrates that in the days leading up to and immediately following the  
19 August 15, 2019 hearing, Murphy was frantically communicating with a person he had hired to  
20 create fake school transcripts, explaining that he needed them quickly or else he would end up in  
21 jail. Even more concerning was the revelation that instead of going to school, Murphy had been  
22 spending his time brokering the sale of large amounts of marijuana, as set forth in detail in his  
23 Instagram account. Finally, Murphy's Instagram account also documents repeated contact with  
24 co-Defendants Deshawn Lemons-Woodard and Paul Rivera. These contacts did not end until  
25 nearly two weeks after the August bail violation hearing.

26 At the October 30, 2019 hearing on the government's motion, the court ordered that  
27 Murphy be remanded to custody. The court instructed the parties to file supplemental briefs on  
28

the issue of bond forfeiture.

**B. Shawn Lemons-Woodard**

Lemons-Woodard is 24 years old. On April 10, 2019, following a contested detention hearing, the court declined to follow Pretrial Services’s recommendation of detention and released Lemons-Woodard on strict conditions that included a \$75,000 unsecured bond with two co-signors (his mother Nichelle Lemons and his aunt Deshawna Sterling Patton).<sup>2</sup> Lemons-Woodard was ordered to live with Patton, who agreed to act as his custodian. The court also imposed an electronic monitoring condition and placed Lemons-Woodard on house arrest, with the ability to leave home for specified pre-approved reasons such as court appearances, drug treatment, and counseling. Lemons-Woodard was ordered to have no contact with his co-Defendants outside the presence of counsel. The court restricted his use of a phone unless permitted by his custodian and also ordered that Lemons-Woodard could not have access to the internet, given the government’s proffer regarding his use of his Instagram account to market and sell firearms. Release Order [Docket No. 79]. The court interviewed Patton and Lemons in court, explained the obligations of co-signors and custodians, and made sure that they understood all risks, including the risk of a \$75,000 forfeiture should Lemons-Woodard violate the conditions of his release. The court asked them if they understood the risks and obligations, and if they were willing to agree to sign on the bond and take on those risks. Patton and Lemons both answered in the affirmative.

As with Murphy, the first few months of pretrial supervision appeared to go well. On June 18, 2019, the court signed the parties’ stipulation and proposed order allowing Lemons-Woodard to leave the home to begin looking for a job and to go to school. [Docket 121]. On September 9, 2019, the Pretrial Services officer circulated an informational memorandum explaining that Patton no longer wanted Lemons-Woodard to live with her and no longer wanted to serve as his custodian due to conflicts with Lemons-Woodard’s girlfriend. After further investigation, the officer requested that the court hold a hearing to determine whether the conditions of release

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<sup>2</sup> As with Murphy, the court appointed the co-signors under the section 3142(c)(xiv) “catch all” provision, and not as formal sureties.

1 should be modified in order to address the conflict.

2 At the October 1, 2019 hearing, the government notified the court and Lemons-Woodard  
3 that it was investigating potential bail violations committed by him. The court followed Pretrial  
4 Services's recommendation and modified the bond by removing Patton from her obligations on  
5 the bond as a co-signor and a custodian, by ordering Lemons-Woodard to live with Lemons, and  
6 by appointing Lemons as substitute custodian. Lemons agreed to act as a custodian and to  
7 continue to be a co-signor on the bond, even after learning that the government was developing  
8 information to demonstrate that Lemons-Woodard had violated his bail conditions. [Docket No.  
9 159].

10 On October 18, 2019, the government filed its motion to remand Lemons-Woodard and to  
11 forfeit his bond. [Docket No. 162]. Prior to the hearing on that motion, the Pretrial Services  
12 officer circulated a bail violation notice stating that Lemons-Woodard had tested positive for  
13 marijuana use on four occasions in October 2019. The officer asked that those violations be  
14 addressed at the motion hearing. [Docket No. 172].

15 In its motion to remand, the government submitted uncontested evidence demonstrating  
16 that after Lemons-Woodard's release, which included the condition that he not use the internet, he  
17 created a new Instagram account. Lemons-Woodard then used that account to communicate with  
18 co-Defendants Rivera and Murphy. His communications included admissions that he had used  
19 drugs and was seeking Rivera's advice about how to clean the drugs out of his system in order to  
20 avoid detection through the drug testing condition of his release. Pursuant to his release  
21 conditions, Lemons-Woodard was on house arrest and could only leave his home for preapproved  
22 reasons, including employment. Lemons-Woodard apparently got a job in order to obtain  
23 opportunities to be out of the house. As he reported in an Instagram message to Rivera, "they got  
24 me on house arrest but I jus got a job so I be able to wiggle a lil." Lemons-Woodard's Instagram  
25 account demonstrates that he then used this "wiggle room" to sell marijuana while under pretrial  
26 supervision in July and August 2019. This included sales through Instagram, followed by  
27 personal delivery by Lemons-Woodard.

28 **II. LEGAL STANDARDS**



1 Federal Rule of Criminal Procedure 46(f)(1) commands that the court “must declare the  
2 bail forfeited if a condition of the bond is breached.” Although generally the purpose of a bail  
3 bond is to ensure that the accused will appear in court, forfeiture of a bond is not limited to  
4 situations where defendants fail to appear. Forfeiture is also appropriate for violations of other  
5 conditions of release. *United States v. Vaccaro*, 51 F.3d 189, 192-93 (9th Cir. 1995) (affirming  
6 bond forfeiture where defendant violated the “break no laws” condition of his release order).

7 Here, Murphy and Lemons-Woodard both clearly and knowingly breached conditions of  
8 their bonds. Murphy sold marijuana in violation of the law. He also likely violated the law by  
9 obtaining forged documents that he submitted to Pretrial Services as proof of compliance with a  
10 bond condition. He had impermissible contact with his co-Defendants. Finally, he lied to Pretrial  
11 Services about attending school and work, which resulted in him being out in the community for  
12 reasons that were not permitted under the conditions of his bond.

13 Lemons-Woodard breached the conditions of his bond by selling marijuana. He also had  
14 impermissible contact with two co-Defendants. He further violated his bond conditions by using  
15 the internet to create a new Instagram account and using it to sell drugs, seek advice about evading  
16 adverse drug testing results, and communicate with his co-Defendants. Therefore, the mandatory  
17 language of Rule 46(f)(1) requires the court to declare the bail forfeited as to both Murphy and  
18 Lemons-Woodard.

19 Even if bail is forfeited, Rule 46(f)(2) permits a court to set aside the forfeiture in whole or  
20 in part if surety surrenders the defendant into custody, or “it appears that justice does not require  
21 bail forfeiture.” The decision whether to set aside or remit a forfeiture rests within the sound  
22 discretion of the court. *See United States v. Frias-Ramirez*, 670 F.2d 849, 852 (9th Cir. 1982);  
23 *United States v. Nguyen*, 279 F.3d 1112, 1115 (9th Cir. 2002).

24 The Ninth Circuit considers six non-exclusive factors in determining whether the court  
25 should exercise its discretion to set aside or remit the forfeiture of a bond:

- 26 1) the defendant's willfulness in breaching a release condition; 2) the sureties'  
27 participation in apprehending the defendant; 3) the cost, inconvenience, and  
28 prejudice suffered by the government; 4) mitigating factors; 5) whether the surety  
is a professional or a member of the family or a friend, and 6) the appropriateness

of the amount of the bond.

*United States v. Amwest Sur. Ins. Co.*, 54 F.3d 601, 603 (9th Cir. 1995) (citations omitted); *see also Nguyen*, 279 F.3d at 1115-16. Courts in this district have considered additional factors, including whether actions by the government unknown to the surety increased the risk that the defendant would violate the conditions of his release, and whether the surety played a role or was in some measure responsible for the conduct that breached the release conditions. *United States v. Little Cloud*, No. 16-cr-266-SI at 6, 7 (N.D. Cal. Nov. 9, 2017) (citing *United States v. Famiglietti*, 548 F. Supp. 2d 398, 405 (S.D. Tex. 2008) (Brazil, M.J.) (applying Ninth Circuit law); *United States v. Villalobos*, No. 00-cr-40242, 2005 WL 6127290, at \*2 (N.D. Cal. Feb. 17, 2005) (Brazil, M.J.)).

Neither of these additional factors applies to the bonds at issue here.

Not all of the factors need to be resolved in the government’s favor in order deny a request to set aside or remit the bond. *Amwest*, 54 F.3d at 603. In weighing the factors, the court is guided by the primary purposes of the Bail Reform Act: ensuring the defendant’s appearance in court and observance of the release conditions. *Vaccaro*, 51 F.3d at 192-93.

The third and fifth factors bear further explanation. With respect to the third factor, which examines the cost, inconvenience and prejudice suffered by the government, the government does not have to provide a bill of costs, “nor can the cost and inconvenience factor be dismissed simply because they were not substantial.” *Nguyen*, 279 F.3d at 1117. The Ninth Circuit has “recognized that where there has been cost and inconvenience to the government . . . the amount need not be specified. That is consistent with this court’s view that bail bonds are contracts for liquidated damages. . . . The hallmark of a liquidated damage provision is reasonableness at the time the agreement is made rather than a calculation of actual provable losses when the breach occurs . . . . A match [between cost to government and the bond] is not necessary and its lack does not require that the bond be remitted in whole or in part.” *Amwest*, 54 F.3d at 604-05.

As to the fifth factor, it appears to draw a distinction between professional sureties on the one hand and family and friends on the other. However, the Ninth Circuit has declined to adopt a “loving relative” exception to bond forfeiture jurisprudence. “We believe that a loving relative . . . would be better advised to counsel her . . . relation to obey, rather than ignore, court orders.”

1 *Nguyen*, 279 F.3d at 1117 n.2. Judge Brazil examined this point extensively in *Famiglietti* and  
2 *Villalobos*. He noted that Ninth Circuit jurisprudence prevents the court from considering as a  
3 mitigating factor “the effect the forfeiture would have on the sureties-even if that effect would be  
4 devastating and the amount of money forfeited to the government clearly was much greater than  
5 the costs the government incurred because of the defendant's breach.” *Famiglietti*, 548 F. Supp.  
6 2d at 407. He wrote that the policy underlying this rule did not derive from a desire to punish the  
7 defendant or the surety, but rather to ensure “that defendants and sureties will take their bond  
8 commitments seriously.” *Id.*

9 As Judge Brazil explained in detail, “persons accused of federal crimes often have  
10 substantial criminal records and few assets.” *Id.* at 408. Professional sureties may be less likely to  
11 post bail for federal defendants who can trigger forfeiture of a bond through violation of any term  
12 of release.<sup>3</sup> For this reason, the willingness of family and friends who are willing to support a  
13 defendant’s release by exposing themselves to adverse financial consequences is critical to a  
14 federal defendant’s ability to argue successfully for release pending prosecution. *Id.* However, as  
15 Judge Brazil cogently described, this means that where defendants are released without the actual  
16 posting of a money bond, but rather on the potential risk of a money judgment, “bail commitments  
17 by family members and friends must be real” in order to have the desired effect of inducing a  
18 defendant to comply with his or her release conditions:

19 Generally, a surety who believes that she will suffer substantially if the  
20 defendant breaches is more likely to exercise considered judgment about the  
21 reliability of the defendant than a surety who doesn't expect to suffer significantly if  
22 her assurances to the court are ill-placed. It would impair substantially the court's  
23 ability to assess how real the surety's apparent vote of confidence in the defendant  
24 was if the surety were permitted to assume that her promises were not likely to be  
25 enforced...

26 [Moreover,] [a] judge who is trying to decide whether he can release a defendant  
27 needs to have some level of confidence that the defendant himself will feel pressure  
28 (from within, not just from without) to comply with the terms the court sets. One  
important source of such ‘internal’ pressure on a defendant is fear that if he  
breaches, he will impose real harm on people he cares about. That source of  
pressure would be diluted, if not extinguished, if the defendant were permitted to

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<sup>3</sup> This is in contrast to state bail practices, where a surety may only be exposed to loss on a bond if the defendant does not appear in court.

infer that nothing bad (of any consequence) would happen to his sureties if he breached. Again, a judge who thought that a defendant held this view would be less able to develop the assurances the law requires in order to release a defendant before trial.

*Id.* at 408-09.

Judge Brazil reasoned that “if a judge could not have confidence that proposed sureties believe that their exposure on a bond is real, i.e., that they will in fact be required to pay the government the face value of the bond if the defendant commits a serious breach of the bond's terms,” the judge would not be able to “ascribe real weight” to the proffered family members or friends. This in turn would likely lead to fewer pretrial release decisions, particularly for those defendants who do not have access to significant financial assets. *Id.* at 409. He concluded that “it is essential to protecting the rights of defendants that judges be able to attach real significance to commitments by sureties-and judges can do that only if they can assume that sureties really believe they will be required to pay the face value of the bond if the defendant commits a serious breach of its terms.” *Id.*

### III. ANALYSIS

#### A. Darrell Murphy

Murphy first argues that the bond should be remitted because he has satisfied Rule 46(f)(2)(A), which gives the court discretion to set aside a bail forfeiture if “the surety later surrenders into custody the person released on the surety’s appearance bond.” Murphy argues that he qualifies for a set-aside under this provision because Fields accompanied him to the hearing on the motion for remand, which amounts to having “surrendered” Murphy into custody. This argument lacks merit. Rule 46(f)(2)(A) is directed to situations where a defendant fails to make a court appearance and a surety later surrenders the defendant into custody. Here, Murphy engaged in numerous bail violations that resulted in remand and bond forfeiture; however, those violations do not involve failures to appear in court. Therefore, Rule 46(f)(2)(A) does not apply.

Turning to the multi-factor analysis, Murphy concedes that the first factor favors the government in that he acted willfully. The record amply demonstrates that Murphy acted with a clear understanding that he was violating numerous conditions of his release. Murphy does not challenge the government’s proffer that he sold large amounts of marijuana over the internet, and

1 that he communicated with co-Defendants Lemons-Woodard and Rivera outside the presence of  
2 counsel. Murphy also feigned going to work and school in order to evade his restrictive house-  
3 arrest conditions. After being caught in his deceptive behavior, he repeatedly lied to his Pretrial  
4 Services officer as well as the court and purchased forged documents in order to try to cover his  
5 tracks.

6 The second factor considers the surety's participation in apprehending the defendant. As  
7 discussed above with respect to Murphy's argument regarding Rule 46(f)(2)(A), this is not a  
8 situation involving Murphy's failure to appear. Therefore, this factor does not apply here.

9 The third factor examines the cost, inconvenience and prejudice to the government. The  
10 government argues that Pretrial Services spent many hours investigating Murphy's deceptive  
11 conduct and subsequent attempts to cover it up, instead of using that time to supervise other  
12 defendants on pretrial release. In addition, federal agents and prosecutors spent significant  
13 amounts of time preparing an affidavit to support a search warrant to obtain content from  
14 Murphy's Instagram account, and then reviewing thousands of pages of material that resulted in  
15 locating evidence of Murphy's drug sales while on supervision, prohibited contact with his co-  
16 Defendants, and procurement of forged school documents. The government also had to spend  
17 time on the motions for remand and forfeiture. All of this time could have been spent on the  
18 prosecution of the merits of this case, or on other cases. Murphy responds that the time spent by  
19 Pretrial Services, agents and prosecutors does not come close to the \$50,000 bond amount.  
20 However, as discussed above, the Ninth Circuit specifically has stated that the government does  
21 not have to specify or otherwise prove up the costs caused by a defendant's bail violations. This is  
22 because the amounts set on release bonds function essentially as liquidated damages. Therefore, a  
23 match between cost and bond is not required, and the lack of a match does not necessarily result in  
24 whole or partial remission. *Amwest*, 54 F.3d at 604-05.

25 As to the fourth factor, the only mitigation identified by Murphy is his youth. This is not  
26 compelling. The court interacted with Murphy multiple times in court and is convinced that he  
27 completely understood the consequences of his actions, including the risk that the government  
28 would obtain a monetary judgment against him as well as his grandmother.

1           The fifth factor examines whether the surety is a professional, as opposed to a family  
2 member or friend. Fields submitted a letter to the court asking for remittance of the bond and  
3 explaining that Murphy had deceived and betrayed her as well, even though she had done what she  
4 could to help him. [Docket No. 183.] The court acknowledges that forfeiture of the bond may  
5 well result in difficult consequences for Fields and Murphy’s financial status, whether or not the  
6 government ultimately chooses to attempt to collect on the bond. However, as set forth above,  
7 the Ninth Circuit specifically has declined to adopt a “loving relative” exception to bond  
8 forfeiture. Fields was well aware of the serious repercussions she could face as a co-signor on the  
9 bond. In fact, the court specifically addressed her at the August 15, 2019 bail violation hearing  
10 and gave her an opportunity to seek removal from her obligations. She chose to stay on the bond.  
11 As eloquently described by Judge Brazil, in order for a judge to accept a family member or friend  
12 with few material resources as a co-signor, the risks of signing the bond have to be “real.” If  
13 defendants and co-signors agree to take on risks that they believe are illusory, co-signors will no  
14 longer effectively mitigate the risk of flight or danger posed by defendants. Such a system could  
15 lead to the unsought result of fewer pretrial release decisions for defendants who are not able to  
16 post property or money.

17           The sixth factor examines the appropriateness of the amount of the bond. Without citing to  
18 legal authority, Murphy argues that a \$50,000 forfeiture would amount to an excessive and  
19 arbitrary penalty in violation of his due process rights under the Fifth Amendment. The court  
20 disagrees. As discussed above, the Ninth Circuit considers a release order to be a contract, with  
21 the bond amount akin to a liquidated damages clause, and the cost and inconvenience incurred by  
22 the government as a result of a defendant’s breach of bond conditions need not be specified, nor  
23 does it need to match the amount of the bond. “The hallmark of a liquidated damage provision is  
24 reasonableness at the time the agreement is made rather than a calculation of actual provable  
25 losses when the breach occurs.” *Amwest*, 54 F.3d at 604-605. A judge must set the amount of a  
26 bond based on “circumstance-specific and defendant-specific considerations.” *Famiglietti*, 548 F.  
27 Supp. 2d at 414. In this case, the court adopted the \$50,000 bond amount recommended by  
28 Pretrial Services after a full detention hearing because that amount plus the other bond conditions

1 fairly accounted for the specific risks presented by Murphy. Drawing upon ten years of service on  
2 the bench, the court also finds that \$50,000 is well within the range of bond amounts set in similar  
3 situations.

4 In sum, all relevant factors weigh in favor of forfeiture of Murphy's bond.

5 **B. Shawn Lemons-Woodard**

6 With respect to the first factor, Lemons-Woodard concedes that he acted willfully.  
7 Lemons-Woodard did not attempt to dispute that he covertly created a new Instagram account in  
8 violation of his bond conditions and that he used that account to sell marijuana and to illicitly  
9 communicate with his co-Defendants, including asking for advice about how to evade incurring a  
10 positive drug test.

11 The second factor regarding the surety's participation in apprehending the defendant does  
12 not apply here.

13 With respect to the third factor, Lemons-Woodard does not attempt to dispute that Pretrial  
14 Services and federal agents and prosecutors had to devote time to investigating and proving up his  
15 bail violations. As set forth above, the government need not quantify the "cost, inconvenience and  
16 prejudice" that it incurred. Although the nature of Murphy's violations required more  
17 investigative and prosecutorial resources than those expended on Lemons-Woodard, those  
18 resources were nevertheless significant.

19 As to the fourth factor, the only mitigation identified by Lemons-Woodard is that by  
20 supporting him, his mother was acting out of love and did not participate in any way in the  
21 violations. This is true. However, as discussed with respect to the fifth factor, the Ninth Circuit  
22 has specifically refused to adopt a "loving relative" exception in its bail forfeiture jurisprudence.

23 Under the fifth factor, the court recognizes that co-signor Lemons is a family member  
24 rather than a professional surety. However, she voluntarily agreed to co-sign the \$75,000 bond at  
25 its inception, after having been fully apprised of the attendant risks. As Lemons-Woodard  
26 acknowledges, at the October 1, 2019 hearing after another colloquy with the court, Lemons once  
27 again agreed to stay on the bond and to take on the additional role of custodian, even after being  
28 informed by the government that it was investigating Lemons-Woodard for bail violations. The

1 court recognizes with regret that imposition of bail forfeiture undoubtedly would damage  
2 Lemons's financial status, whether or not the government chooses to attempt to collect on the  
3 bond. However, the record demonstrates that she assumed that risk voluntarily and knowingly.  
4 For the same reasons discussed at length above, the risk of bail forfeiture must be "real" in order  
5 to maintain the systemic integrity that is critical to a judge's ability to mitigate risks through the  
6 use of unsecured bonds, and to be able to release defendants who do not have ready access to  
7 resources.

8 As to the sixth factor, Lemons-Woodard does not argue that the amount of the \$75,000  
9 bond was inappropriate. Instead, he argues that it is a sum that would create an extreme hardship  
10 for his mother; as discussed above, this is no doubt true, but does not affect the analysis. The  
11 court set the unsecured \$75,000 bond amount by taking into account the specific risks presented  
12 by Lemons-Woodard; it is well within the range of bond amounts set for defendants posing similar  
13 risks.

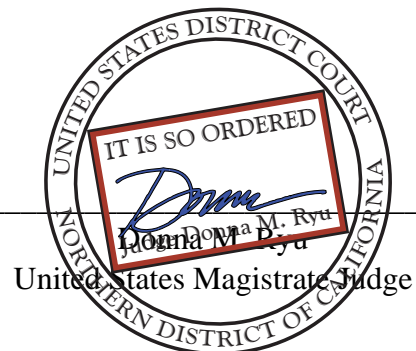
14 In sum, all relevant factors weigh in favor of forfeiture of Lemons-Woodard's bond.

#### 15 **IV. CONCLUSION**

16 For the reasons set forth above, the court orders that Murphy and Lemons-Woodard's  
17 bonds be forfeited against each of them as well as their co-signors. The court finds that the facts  
18 for each of these Defendants do not support the exercise of discretion to remit the bond in whole  
19 or in part. Pursuant to Rule 59(a), a party may serve and file objections to this order within 14  
20 days after being served with a copy of this order. Failure to object in accordance with Rule 59(a)  
21 waives a party's right to review.

22 **IT IS SO ORDERED.**

23 Dated: February 17, 2020



United States Magistrate Judge